

**REMARKS**

In response to the Office Action dated September 9, 2004, Applicants respectfully request reconsideration.

The Examiner rejected claims 12-13 under 35 USC 112, first paragraph, asserting that the specification fails to disclose that “the at least one remote site and the at least one user site do not need to acknowledge each other” as recited. Applicants have removed this phrase from these claims, rendering this rejection moot. Applicants respectfully assert that claims 12-13 satisfy 35 USC 112, first paragraph.

The Examiner rejected claims 15-16 under 35 USC 112, first paragraph, asserting that the specification fails to disclose combining captured communication data and application data from their respective interfaces. Applicants have canceled claim 15 without prejudice, rendering the rejection of this claim moot. Applicants have amended claim 16 to recite that the client application is configured to combine the collected performance data. Applicants respectfully assert that claim 16 satisfies 35 USC 112, first paragraph.

The Examiner rejected claim 17 under 35 USC 112, first paragraph, asserting that the specification fails to disclose a client application adapted to detect and install an application level interface in web browsers. Applicants have canceled claim 17 without prejudice, rendering this rejection moot.

The Examiner rejected claim 21 under 35 USC 112, first paragraph, asserting that the specification fails to disclose generating graphical illustrations of aggregated end user response in combination with actual performance. Applicants have amended claim 21 to recite that at least one server is configured to use the received performance data to produce reports of the received data. Applicants respectfully assert that claim 21 satisfies 35 USC 112, first paragraph.

The Examiner rejected claims 22-23 under 35 USC 112, first paragraph, asserting that the specification fails to disclose a client application adapted to queue a predetermined number of immediately preceding page performance measurements. Applicants have amended claim 22 to recite a client application that is adapted to buffer page performance measurements for transmission or internal assessment. Applicants

have amended claim 23 to recite that the client application is adapted to transmit the buffered page performance measurements in response to instruction from the at least one server or in response to the internal assessment. Applicants respectfully assert that claims 22-23 satisfy 35 USC 112, first paragraph.

The Examiner rejected claims 23, 25, 29-37, 40, and 42-45 under 35 USC 112, first paragraph, asserting that the specification fails to disclose a client application that receives instruction from a monitoring server. Applicants have canceled claim 25 without prejudice, rendering the rejection of this claim moot. Applicants have amended the other claims to recite that the client application receives instruction from "at least one server." The at least one server may include, e.g., the director 120, the summarizer 135, and the authority server 100 (FIG. 1). The Examiner noted that the specification discloses the authority server 100 providing instruction to a client application. Applicants respectfully assert that claims 23, 29-37, 40, and 42-45 satisfy 35 USC 112, first paragraph.

The Examiner rejected claim 26 under 35 USC 112, first paragraph, asserting that the specification fails to disclose that a client application is adapted to *preempt and reset* any executing measurement transmission rule. Applicants have canceled claim 25 without prejudice, rendering the rejection of this claim moot.

The Examiner rejected claim 26 under 35 USC 112, first paragraph, asserting that the specification fails to disclose that a client application is adapted to *request and cache*, for a configurable period of time, metrics associated with objects (emphasis provided by the Examiner). Applicants respectfully assert that the specification supports claim 26. Paragraphs 0040-0041 at the bottom of page 8 to the top of page 9 of the specification as filed disclose that the client application captures internet application communication, receives metrics for individual objects of web pages, and writes messages in a shared memory. Thus, the client application is adapted to request and cache metrics as recited. Applicants respectfully assert that claim 25 satisfies 35 USC 112, first paragraph.

The Examiner rejected claim 45 under 35 USC 112, first paragraph, asserting that the specification fails to disclose that a monitoring server is adapted to determine and initiate software version alterations based on agent-transmitted installation parameters including geography. Applicants have amended claim 45 to recite that at least one server

is adapted to determine and initiate software version alterations based on version information. Applicants respectfully assert that claim 45 satisfies 35 USC 112, first paragraph.

The Examiner rejected claim 50 under 35 USC 112, first paragraph, asserting that the specification fails to disclose that a monitoring server is adapted to determine and initiate software version alterations based on agent-transmitted installation parameters including geography. Applicants have amended claim 45 to recite that at least one server is adapted to determine and initiate software version alterations based on version information. Applicants respectfully assert that claim 45 satisfies 35 USC 112, first paragraph.

The Examiner rejected claims 12-13 under 35 USC 112, second paragraph, asserting that the recited phrase “the at least one remote site and the at least one user site do not need to acknowledge each other” is unclear. Applicants have removed this phrase from these claims, rendering this rejection moot. Applicants respectfully assert that claims 12-13 satisfy 35 USC 112, second paragraph.

The Examiner rejected claims 13-50 under 35 USC 112, second paragraph, asserting that the recited communication data and application data are unclear. Applicants have amended claim 13, from which claims 14-50 depend, to recite that the “communication data [are] indicative of network statistics for data transfers and [the] application data [are] indicative of statistics of the network browser.” Applicants respectfully assert that claims 13-50 satisfy 35 USC 112, second paragraph.

The Examiner rejected claims 15-16 under 35 USC 112, second paragraph, asserting that the recited combining captured communication data and application data from their respective interfaces is unclear. Applicants have canceled claim 15 without prejudice, rendering the rejection of this claim moot. Applicants have amended claim 16 to recite that the client application is configured to combine the collected performance data. Applicants respectfully assert that claims 12-13 satisfy 35 USC 112, second paragraph.

The Examiner rejected claim 17 under 35 USC 112, second paragraph, asserting that the recited client application adapted to detect and install an application level

interface in web browsers is unclear. Applicants have canceled claim 17 without prejudice, rendering this rejection moot.

The Examiner rejected claims 22-23 under 35 USC 112, second paragraph, asserting that the recited limitation of a client application adapted to queue a predetermined number of immediately preceding page performance measurements is unclear. Applicants have amended claim 22 to recite a client application that is adapted to buffer page performance measurements for transmission or internal assessment. Applicants have amended claim 23 to recite that the client application is adapted to transmit the buffered page performance measurements in response to instruction from the at least one server or in response to the internal assessment. Applicants respectfully assert that claims 22-23 satisfy 35 USC 112, second paragraph.

The Examiner rejected claims 23, 25, 29-37, 40, and 42-45 under 35 USC 112, second paragraph, asserting that the recited limitation of a client application receiving instructions from a monitoring server is unclear. Applicants have canceled claim 25 without prejudice, rendering the rejection of this claim moot. Applicants have amended the other claims to recite that the client application receives instruction from "at least one server." The at least one server may include, e.g., the director 120, the summarizer 135, and the authority server 100 (FIG. 1). The Examiner noted that the specification discloses the authority server 100 providing instruction to a client application. Applicants respectfully assert that claims 23, 29-37, 40, and 42-46 satisfy 35 USC 112, second paragraph.

Claims 1, 2, and 4-12 stand rejected under 35 USC 102(e) in view of U.S. Patent No. 6,070,190 (Reps). Applicants respectfully assert that claims 1, 2, and 4-12 are patentable in view of Reps.

Claim 1 recites a method of managing a data access system configured to transfer data over a communication network between a server system and a plurality of user sites in response to requests from network browsers at the user sites. The method includes monitoring a network browser of a first user site of the plurality of user sites to obtain performance data of the data access system, the performance data being indicative of a data transfer operation in the data access system performed in response to a network browser request initiated by a user of the first user site, the monitoring being controlled

by a monitoring agent resident at the first user site. Conversely, Reps discusses monitoring application availability and responses for distributed computing environments where formatted probes can be issued from client computers to perform the monitoring. Title; Abstract; FIG. 3; Col. 11, lines 41-59. The client computer 106 prompts a user via a GUI template 301 or otherwise to enter probe configuration information 302. FIGS. 1-3; Col. 15, lines 6-10. The probe configuration information is provided to the executable portion of the probe code that uses the information to initiate a series of service requests 210 to a monitored application program on a target server computer system 202. FIGS. 1-3; Col. 15, lines 11-15. Reps thus does not teach, disclose, or suggest monitoring a network browser to obtain performance data indicative of a data transfer operation performed in response to a browser request. Claim 1 is therefore patentable in view of Reps for at least these reasons.

Claims 2 and 4-10, being dependent upon claim 1 directly or indirectly, or patentable in view of Reps for at least the same reasons that claim 1 is patentable in view of Reps. Further, the Examiner cited Col. 6, line 66 – Col. 7, line 13 of Reps as relevant to claim 5. This portion of Reps discusses a data element in a first data set that represents response times for different probes of an application program on different servers for a particular day of a designated month may be dynamically linked to a second data set with elements representing the response times of the set of probes monitoring the application program on the different servers for the particular day of the designated month. According to this passage, the different data sets are concerned with probes of the same servers (second data set concerns probes monitoring the application program on “the different servers”) while claim 5 recites receiving data indicative of the performance of a plurality of data access systems and filtering the received data to pertain to a selected data access system. Thus, claim 5 is patentable in view of Reps for at least this further reason.

Independent claim 11 recites a performance management system for managing a data access system configured to transfer data over a communication network between a server system and a plurality of user sites in response to requests from the user sites. The system includes means for monitoring a network browser of a first user site of the plurality of user sites to obtain performance data of the data access system, the performance data being indicative of a data transfer operation in the data access system

performed in response to a network browser request initiated by a user of the first user site, the monitoring means including a monitoring agent resident at the first user site configured to transmit data indicative of the performance data. Conversely, Reps discusses probing servers with formatted probes, not the recited means for monitoring a network browser for performance data indicative of a data transfer operation performed in response to a network browser request initiated by the user of a user site. Claim 11 is thus patentable in view of Reps for at least these reasons.

Independent claim 12 recites a performance management system that monitors data transferred between at least one remote site and at least one user site. The system includes a network browser disposed on a first user site of the at least one user site and configured to browse the at least one remote site for transferring data between the at least one remote site and the first user site. The system also includes a client that resides on the first user site of the at least one user site and that is configured to collect performance data indicative of a data transfer operation initiated by a network browser request from the network browser, the data transfer operation affecting data transfer between the first user site and the at least one remote site. Conversely, Reps discusses probing servers with formatted probes, not the recited network browser and client configured to collect performance data indicative of a data transfer operation initiated by a network browser request from the network browser. Claim 12 is thus patentable in view of Reps for at least these reasons.

Claim 3 stands rejected under 35 USC 103(a) in view of Reps. Because claim 3 depends indirectly from claim 1, Applicants respectfully assert that claim 3 is patentable in view of Reps for at least the same reasons that claim 1 is patentable in view of Reps.

Claims 13-50 stand rejected under 35 USC 103(a) in view of Reps in view of U.S. Patent No. 6,438,592 (Killian). Applicants have canceled claims 15, 17, and 25 without prejudice, rendering the rejection of these claims moot. Applicants respectfully assert that claims 3, 13-14, 16, 18-24, and 26-50 are patentable in view of Reps and Killian.

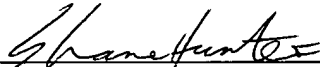
Preliminarily, Applicants respectfully assert that Killian teaches away from a combination of Reps and Killian. At Col. 2, line 66 – Col. 3, line 19, Killian describes a system like Reps where client computers are programmed to measure web page download times and report the measured times. Killian goes on to state that such a

system is spotty at best, as there are more clients than are used to measure download times and this mimicking technique mechanically attempts to imitate the use by human users. Killian further states that it is an object of the description to provide apparatus and methods to improve the monitoring of services provided to clients by web servers. Thus, Killian specifically disparages the techniques discussed by Reps and asserts that Killian's system is intended to improve upon such monitoring techniques. Further, Killian discusses a web system responds to URL requests from client computers by transmitting requested data and performance monitoring instructions that cause the client to send performance messages back indicating the time required for certain acts associated with transmitted data. Abstract. Thus, Killian takes an entirely different approach to data monitoring than Reps, with Killian sending monitoring instructions along with web page downloads while Reps discusses probing servers using a probe program residing on a client computer. Applicants therefore assert that combining Killian with Reps is improper.

Independent claim 13 is patentable even if Reps is combined with Killian. Independent claim 13 recites a performance management system that monitors data transferred between at least one remote site and at least one user site. The system includes a web browser on a first user site, configured to browse the at least one remote site, and a client application that includes a data gathering module adapted to collect performance data. The performance data is indicative of data transfer operations, that affect data transfer between the first user site and the at least one remote site, initiated by network browser requests initiated by a user of the first user site. Conversely, Reps discusses probing servers with formatted probes, not the recited data gathering module adapted to collect performance data indicative of data transfer operations initiated by a network browser request initiated by a user of the first user site. Killian does not make up for the deficiencies of Reps. Killian discusses a web system responds to URL requests from client computers by transmitting requested data and performance monitoring instructions that cause the client to send performance messages back indicating the time required for certain acts associated with transmitted data. For at least these reasons, independent claim 13, and claims 14, 16, 18-24, and 26-50 that depend directly or indirectly from claim 13, are patentable in view of Reps in view of Killian.

Applicants have added claim 51. This claim depends directly from claim 1 and is therefore patentable for at least the reasons discussed above with respect to claim 1. No new matter is added by new claim 51.

Based on the foregoing, this application is believed to be in allowable condition, and a notice to that effect is respectfully requested. The Examiner is invited to call the Applicants' Attorney at the number provided below with any questions.



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